

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NATHEAULEEN MASON, et al.,

Plaintiff,

Case No. 05-73943

v.

Hon. John Corbett O'Meara

JENNIFER GRANHOLM, et al.,

Defendant.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Before the court is a motion for summary judgment submitted by Defendants filed on June 30, 2008.¹ Defendants ask that this court grant them summary judgment on the claims alleged against them under the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and other Cruel, Inhuman, or Degrading Punishment (CAT), and the Fifth Amendment.

In their first, third, and fourth causes of action, Plaintiffs claim that they are entitled to damages under the ICCPR and CAT. Both the ICCPR and the CAT are international treaties that are cognizable in this court only if they are self-executing or if Congress has passed appropriate enabling legislation. See Jocham v. Tuscola County, 239 F.Supp.2d 714, 730 (E.D. Mich. 2004). The ICCPR is neither self-executing nor is it enabled by legislation from Congress. See Bannerman v. Snyder, 325 F.3d 722, 724 (6th Cir. 2003); Buell v. Mitchell, 274 F.3d 337, 372 (6th Cir. 2001). Therefore, the ICCPR is not binding on this court, nor is CAT.² Finally, Plaintiffs concur with Defendant's request to delete references to the Fifth Amendment, but agrees with Plaintiffs that

¹Defendants include Jennifer Granholm, Michigan Department of Corrections, Patricia Caruso, Nancy Zang, Clarice Stovall, Susan Davis, Joan Yukins, Thomas Desantis, Jerry Howell, Crosby Talley, Kirk Tollzein, William Merrow, and Rodney Madden.

²Other circuits aside from the Sixth Circuit have also affirmed this position. De La Rosa v. United States, 32 F.3d 8, 10 n.1 (1st Cir. 1994); Guaylupo-Moya v. Gonzales, 423 F.3d 121, 133 (2nd Cir. 2005); Beazley v. Johnson, 242 F.3d 248 (5th Cir. 2001); United States ex rel Perez v. Warden FMC Rochester, 286 F.3d 1059 (8th Cir. 2002); United States v. Duarte-Acero, 296 F.3d 1277, 1283 (11th Cir. 2002).

summary judgment or an amended complaint are not necessary to achieve this end

For these reasons, IT IS HEREBY ORDERED that Defendants' motion for summary judgment is GRANTED as it pertains to Plaintiff's claims under the International Covenant on Civil and Political Rights (ICCPR), and the Convention Against Torture and other Cruel, Inhuman, or Degrading Punishment (CAT), and reference to the Fifth Amendment relief are deleted.

s/John Corbett O'Meara
United States District Judge

Date: August 12, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, August 12, 2008, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager